

Statement of Ara Azhderian  
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Before the Little Hoover Commission  
State of California

Concerning the CALFED Bay-Delta Program Governance  
September 22, 2005

Good day Mr. Chairman and Commission Members. Thank you for this opportunity to share our view of the issues affecting CALFED governance. My name is Ara Azhderian and I am the Water Policy Administrator for the San Luis & Delta-Mendota Water Authority, a thirty-two member agencies joint-powers authority formed in 1992 to operate and maintain Central Valley Project facilities owned by the United States Bureau of Reclamation and used to supply water to south-of-Delta CVP contractors. Our membership represents a full cross-section of California water agencies that supply water for irrigation, municipal, industrial, and habitat management uses.

In addition to meeting the daily demands of conveying water to our member agencies, we represent them in various administrative, legislative, and judicial forums. In this capacity we have participated with other agencies and interested groups in the development of the CALFED Program since its inception in the late eighties. Of course it was not called CALFED at the time but important efforts evolve, beginning with the "Three Way Process" that fostered the early relationships necessary to negotiate the Bay-Delta Accord, which the Water Authority signed on behalf of its member agencies. The Accord brought a new sense of stability, which had been lacking for better than half a decade, and enabled the critical dialogue necessary to develop actions capable of giving meaning to the mid-nineties mantra, "Get better together". That early vision of recovery developed into the "Framework for Action" and ultimately became the formal articulation of a CALFED Record of Decision, which was signed in August 2000. In addition to our part in creating the Program, we have participated in numerous efforts to ensure its funding and authorization, and currently offer policy input through membership on the Bay-Delta Public Advisory Committee as well as providing technical support in many of the Program's sub-committees.

Our investment in the Program, and that of the other agencies and interested groups, is significant, and the duration of our participation provides a unique perspective on the relationships, trust, and commitments that were necessary to its development. These bonds have been tested over the last few years by a governance system that has frustrated implementation of the Program. You have asked us five pertinent questions on this matter, which we will strive to address; however, it is critical at this juncture to make the distinction between the CALFED Program and its governance by the CBDA.

#### DIFFERENTIATING THE PROGRAM FROM CBDA

The Program is a suite of projects and actions, developed through the efforts previously discussed, to provide balanced solutions to restoring the Bay-Delta ecosystem, restoring

water supply reliability and adequacy, improving water quality, and restoring the Delta levee system. In many respects, the Program represents a compromise among competing uses of Delta resources. It provides no interested group everything it wants, but it furthers the interests of every group that relies upon its implementation. Agencies that rely on water exported from the Delta voluntarily sacrificed much in the process, including the dedication of over one million acre-feet of water for ecosystem and water quality purposes. In August 2000, when the ROD was released, all involved understood that the time for talking was over, the solutions were before us, and the success of the Program would depend on its balanced implementation.

The CBDA, on the other hand, was created by the state legislature, albeit with the best of intentions, to provide the Program, among other things, accountability, balanced implementation, and coordination to meet common goals, avoid conflicts, and eliminate redundancy and waste<sup>1</sup>. At the time of its creation many water agencies, including the Water Authority, questioned the need for the legislation. The creation of the CBDA was wrought with the political pitfalls inherent with such a process. It was laden with unnecessary participants who were ill prepared to make informed decisions, political appointees with ulterior motives, and ambiguous authorities with which to fulfill its purpose. These criticisms of the CBDA, however, do not imply a lack of commitment or equal measure of criticism for the Program. The Program is as good as we could make it; governance has significant room for improvement.

### INADEQUACIES IN GOVERNANCE STRUCTURE

You asked us to describe the “inadequacies” of the existing governance structure, and we are struck by the use of the word. It implies a deficiency that can be corrected by the provision of “something more”. It is our view that “more” has been the problem and that the solution lies rather in something smaller, narrower, and more focused. As alluded to earlier, it was the expectation of the developers of the Program that the governance body provide services to the implementing agencies by coordinating activities and streamlining efforts such as budgeting, contracting, environmental review, permitting, reporting, and public interface. What in fact occurred was just the opposite. From its creation, the CBDA began to inject itself into the decision making process as opposed to facilitating it. This usurpation of clear and established authority fostered animosity between the implementing agencies and the CBDA, and began a spiral of distrust and withdrawal that has frustrated the CBDA’s purpose. In addition to exceeding its intended authority and function, the CBDA became just another bureaucratic layer hindering implementation of the well defined and fully vetted projects identified in the ROD. Process assumed greater importance than progress, and conflict replaced coordination.

These problems are not related necessarily to flaws or “inadequacies” inherent in the established governance structure; rather, they are the result of a misinterpretation by key CBDA staff and board members as to the body’s role in implementing the Program. Many have offered different reasons for the CBDA’s failure: “the CBDA does not have enough

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<sup>1</sup> CALFED Bay-Delta Authority Act, §79401(h)

authority” or “the CBDA has suffered from a lack of federal investment<sup>2</sup>.” We have considered these views and in the end conclude the current governance troubles are not institutional; rather, they are fundamental.

### EXAMPLES OF UNSUITABLE CBDA ACTIVITIES

Illustrative of the CBDA view of its relationship to the implementing agencies is the Program Structure diagram<sup>3</sup> developed by the CBDA, which clearly sets the CBDA on top of all the implementing agencies. A more appropriate Program structure diagram would have put the CBDA in the center of all the implementing agencies, advisory committees, and interested groups. Other specific examples of unwarranted CBDA interference include involvement with the renewal of long-term CVP water service contracts, coordination of the CVPIA’s B2 water account<sup>4</sup> and the EWA<sup>5</sup>, and its attempt to develop a long-term finance plan. We will briefly describe each of these examples as they offer clear distinctions between the appropriate and inappropriate functions of the CBDA at various levels of governance responsibility.

#### CVP Contract Renewal:

Signed in 1992, the CVPIA directed Reclamation to renew long-term contracts with CVP contractors in conformity with the new requirements of the law. Reclamation embarked on a thirteen year process that included initial public scoping meetings, exhaustive review of the environmental effects, and scores of publicly noticed negotiation sessions. Managing the entire effort was the sole responsibility of Reclamation, with required input from the Fish and Wildlife Service and National Oceanic & Atmospheric Administration, and the requested participation of the Department of Water Resources and Department of Fish & Game. CVP contract renewal has no relationship to the ROD and, as such, has no relationship to the CBDA. However, in 2004 the CBDA attempted to inject itself into the process at the eleventh hour by suggesting that it should be conducting yet another series of public hearings and review. This decision by the CBDA further weakened its credibility, increased tension between itself, the implementing agencies, and interested groups, diluted its focus and resources, and confused the public process. The appropriate response of the CBDA should have been to not engage in this process and remain focused on its legitimate endeavor.

#### CVPIA (b)(2) and EWA Coordination:

In 2004, Reclamation and the Service sent a letter to DWR and DFG suggesting, in part, that the fish restoration efforts of these agencies might be enhanced if the management of the b2 and EWA water accounts was coordinated to provide mutual support. Both of these water accounts are directly managed by the implementing agencies<sup>6</sup> with the CBDA’s appropriate

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<sup>2</sup> Ironically, this argument is made in spite of the fact that the federal government has, in the absence of explicit CALFED authorizing language, invested nearly a half-billion dollars on the Ecosystem Restoration Program alone since the issuance of the ROD.

<sup>3</sup> Attachment A.

<sup>4</sup> Central Valley Project Improvement Act, PL 102-575, Title XXXIV, §3406(b)(2)

<sup>5</sup> Environmental Water Account, CALFED 2000 Programmatic Record of Decision, §2.2.7

<sup>6</sup> ROD, Attachment 2, Environmental Water Account Operating Principles Agreement, Page 1, “The five state and federal agencies that execute this agreement will have responsibility for implementing the EWA.” The five signatories are Reclamation, the Service, NMFS (now NOAA), DWR, and DFG.

role being one of reporting and public interface. Regardless, the CBDA claimed to be the decisional body and chastised Reclamation and the Service for not addressing the letter directly to the CBDA. Again, this decision by the CBDA weakened its credibility, increased animosity, diluted focus and resources, and confused the public process. The CBDA's appropriate response should have been to report on the status of the suggestion and provide opportunity for public comment for consideration by the agencies with true decisional authority.

#### Long-Term Finance Plan Development:

In 2004, the CBDA was attempting to develop a long-term finance plan recommendation for the Program. This effort was an appropriate activity for the CBDA to undertake as part of its Program coordination role. However, rather than developing a finance recommendation reflective of the needs and considerate of the responsibilities of the implementing agencies, the CBDA embarked on a process that ignored much of the common interest, technical information, and policy advice provided by implementing agencies and interested groups in favor of a plan compelled by the CBDA upon its membership. For example, in considering funding mechanisms supportive of the "beneficiary pays" principle articulated in the ROD, the CBDA ignored the concepts most basic principles: 1) all beneficiaries pay and 2) payment must directly correlate with an empirical level of benefit. Rather than developing an analysis supportive of this common interest, the CBDA chose to promote a plan void of these appropriate and necessary linkages arguing the effort would either be too difficult or the result too insignificant to warrant the effort. This decision produced a recommended finance plan with intrinsically flawed funding mechanisms. The conflict inherent in this approach was obvious, predictable, and avoidable.

### APPROPRIATE GOVERNANCE FUNCTIONS

While the issues raised in these examples may be subtle, they are critical to understanding the CBDA's failure and highlight the fact that the governance structure is less important to the success of the Program than the understanding of its role in the effort and relationship to its members. Generally speaking, there are four possible functions the Program's governance body could serve at the project level:

- 1) No Action – The purview of the Program's governance body must remain within the parameter established by the ROD. Forays into activities not included in the ROD smear the appropriate lines of implementation responsibility and public process, and dilute the limited resources of the body.
- 2) Report – Many actions identified in the ROD require no coordination primarily due to the fact that they are simple or focused projects manageable by the implementing agency(ies). In these cases, the body should track progress in the context of the Program to ensure balanced implementation, disseminate information, and provide opportunity for public comment.
- 3) Coordinate – Some of the actions identified in the ROD are complex, requiring input from multiple agencies. Such projects could benefit from a streamlining of the implementing processes. In these cases and in addition to reporting actions, the body could develop implementation schedules, organize budgets, coordinate permitting and environmental review, procure materials, and hire contractors.

- 4) Action – The body could approve implementation plans. This affirming action, however, does not mean revisiting a project's decision tree; rather, an approval or disapproval should be nothing more than an acknowledgment of a project's position in the context of the Program's overall objectives and balance.

At the programmatic level, the role of the governance body should generally be the sum of these project specific activities. In order for governance to succeed, we believe it must maintain vigilant awareness of its role in the process, understand its relationship to the customer (aka, members, implementing agencies, and interested groups), facilitate dialog, promote the common interest, coordinate joint efforts, absolutely avoid divisive action, and remain accountable. By this yardstick, the CBDA has failed miserably.

### APPROPRIATE LEVEL OF LEGAL AUTHORITY

There are those that have argued the CBDA needs more authority in order to carry out its mission. We emphatically disagree. First, given the explicit refusal of the federal agencies to capitulate their long established and legitimate authorities, and the unlikelihood that Congress would formally yield any degree of its duties to a State agency, renders the proposal impractical. Furthermore, even within the confines of the State government, the implicit reluctance of the State implementing agencies to relinquish their decisional and budgetary responsibilities seems just as problematic. We see only potential for greater conflict resulting in the ultimate failure of the Program if such action is taken. Second, given the CBDA's propensity to abuse its current power and position, we question the wisdom of giving it a greater role in the Program's execution. Third, in evaluating the rate and balance of Program implementation prior to the creation of the CBDA, we find the agencies, through their various forms of self-governance, to have been more effective.

### IMPLEMENTING AGENCIES' COLLABORATION

Through all of the turmoil that has been CALFED Program implementation over the last few years, we find that the relationships between the various implementing agencies have remained remarkably stable. There has always been, and likely always will be, some sense of independence or proprietorship within the implementing agencies, which has not always served them well. Too, the political element influencing agency behavior will remain a dynamic and unpredictable impediment to further cross pollination. However, in spite of all that, through the development of CALFED over the last fifteen years a spirit of cooperation has evolved, which is most evident in times of crisis. The rapid response to the current Delta ecosystem health question through the commitment of significant resources to the Interagency Ecological Program is a shining example. Others could be made, but perhaps the most significant illustration of the success of the state and federal partnership is in the collaborative implementation of the Program itself. Through the changing political winds and obstacles created by the CBDA, the implementing agencies have worked through their imperfect relationships and maintain a strong commitment to the Program, even in the face of occasionally stiff opposition and criticism.

## CALFED GOVERNANCE RECOMMENDATIONS

In deference to the abilities and well established commitment and vision of the implementing agencies in advancing the balanced objectives of the Program we offer the following recommendations for the future structure of CALFED governance:

- 1) The governing entity should be comprised of only the directors of the implementing agencies.
- 2) The chairman of the governance board should be selected by the board and rotated on an annual basis so as to avoid unnecessary politicalization of the entity.
- 3) The governing entity should utilize the Bay-Delta Public Advisory Committee as the vehicle for input from interested groups. Though the recent reauthorization of the BDPAC clearly establishes the body as an advisor to the Secretary of the Interior, its composition ensures a level of diversity, independence, and credibility sufficient to provide the governance board objective advice.
- 4) The governing entity must avoid attempting to develop consensus on implementation at a project by project level. Rather, projects must be prioritized and implemented in the context of the Program's overall objectives and balance.
- 5) The governing entity should continue to meet publicly to maintain implementation transparency; however, the meetings need not occur frequently, perhaps quarterly, and should not be a forum to rehash the decisional process. Public comment must be accepted.
- 6) The governing entity could maintain staff but only at a level necessary to provide the coordination and reporting services sought by the implementing agencies.
- 7) The governing entity could provide budgeting services at the discretion of the implementing agencies if such activities were deemed to increase operational or reporting efficiencies. The entity should not however have any independent budgeting or appropriative responsibilities. All appropriative responsibilities should remain strictly with the implementing agencies.

By putting the Program back into the hands of the implementing agencies we can restore the progress and credibility of the process. Some have lauded the successes of the CBDA, perhaps only out of politeness, but when one stops to ponder what those successes have been it is impossible to identify an action that would not or could not have occurred in the absence of the CBDA. Even if we choose to give the CBDA the benefit of the doubt and assign some measure of success to its effort, it still remains most difficult to conclude that the benefits of maintaining the CBDA outweigh the detriments. Regrettably, this is our conclusion.

I very much appreciate this opportunity to share with you the views of our membership, though I have taken no pleasure in the task. I look forward to answering any questions you may have.

# Program Structure

